

**CLOSED**

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

_____	:	<b>Hon. Dennis M. Cavanaugh</b>
UNITED STATES OF AMERICA,	:	
	:	<b>ORDER</b>
Plaintiff,	:	
	:	Crim. Action No. 03-CR-666 (DMC)
v.	:	
	:	
RODNEY KEARNEY,	:	
	:	
Defendant.	:	
_____	:	

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon a motion by Defendant Rodney Kearney (“Defendant”) for a modification of his November 28, 2005 sentence in light of Amendment 709 to the United States Sentencing Guidelines effective November 1, 2007. Defendant seeks a reduction of his eighty-four month sentence pursuant to Amendment 709, but this Amendment is not retroactive.

The Third Circuit has stated that Amendment 709 may not be applied retroactively. In United States v. Black, the District of Delaware confirmed that Amendment 709 is not listed as among the guideline amendments to be given retroactive effect, so a modification of that defendant’s sentence pursuant to 18 U.S.S.G. §3582 was not permitted. 2008 WL 2221768 \*2 (D.Del. May 23, 2008). Defendant concedes in his moving papers that Amendment 709 is not retroactive. For the reasons stated,

IT IS on this \_\_\_\_ day of August, 2008;

**ORDERED** that Defendant’s motion for modification of his sentence is **denied**.

\_\_\_\_\_  
Dennis M. Cavanaugh, U.S.D.J.

Original: Clerk  
cc: All Counsel of Record  
Hon. Mark Falk, U.S.M.J.  
File